

**The Launch of the Legal Statement on the Status of
Cryptoassets and Smart Contracts**

Monday 18th November 2019

Sir Geoffrey Vos, Chancellor of the High Court

Introduction

1. I am grateful to Catherine, Christina and, of course, to the Lord Chief Justice and Lord Keen for their comments.
2. I believe that this morning is a watershed for English law and the UK's jurisdictions. Our statement on the legal status of cryptoassets and smart contracts is something that no other jurisdiction has attempted. It is genuinely groundbreaking. I want to take a few minutes of your time to explain why that is the case, to give you a little of the background to the thinking behind it, and to identify the main points of its conclusions.
3. The first thing to understand about cryptoassets is that they are not all about Bitcoin and Bitcoin mining as some people tend to think when the subject is raised. There is an endless spectrum of types of cryptoasset and cryptocurrencies, many of which already are or certainly will be designed for use as wholesale and retail payment mechanisms. They will be what one might call investment grade.
4. It is for that reason that the thinking behind this legal statement was that what was lacking was a clear view of the legal status of cryptoassets under English law. If the legal foundation could once be established, uncertainty would dissipate, and it would be possible for the regulators to consider what regulatory measures were needed, and for the courts to consider, where appropriate, what remedies might be available in respect of transactions involving the transfer and securitisation of cryptoassets.

5. Other jurisdictions have addressed the problem differently. In many cases, they have started from the standpoint of regulation and remedies and worked backwards. Our objective in the UK Jurisdiction Taskforce has been to start from basic legal principles and work forward to regulation and remedies. There is no point in introducing regulations until you properly understand the legal status of the asset class that you are regulating. Likewise, one cannot consider what remedies ought or ought not to be available until one has that same underlying understanding.
6. The objective, of course, is to provide much needed market confidence and a degree of legal certainty as regards English common law in an area that is critical to the successful development and use of cryptoassets and smart contracts in the global financial services industry and beyond.
7. The process that the taskforce adopted was to draft a short list of legal questions, and then to consult widely about the appropriateness of those questions amongst the tech community, the financial services sector, the regulators and the lawyers. The Taskforce held public meetings and received a wide range of the very best expert opinion. The resulting questions were put to the team of expert QCs and barristers asking them to deliver a definitive statement of what English law now provides in this area. The outcome is not about what they would like English law to be; it is about what they believe English law actually to be.
8. We have been very lucky to receive help and assistance from a large range of professionals and academics – all of whom are named in the Statement and its appendices. But special thanks must go to Linklaters, Richard Hay and Sam Quirke in particular, who worked tirelessly and *pro bono* in fashioning the public consultation document that allowed the Taskforce to finalise the legal questions.
9. Special thanks must also go to Lawrence Akka QC, David Quest QC, Matthew Lavy and Sam Goodman, the expert counsel drafting team, all of whom have selflessly given up their time to prepare what has become a masterpiece of legal

precision. They managed to take on board comments from 29 expert consultees, having prepared the first drafts of the legal statement. It has been a gargantuan effort.

10. The next step is for the Law Commission to consider whether any legislation might be desirable in this area. Sir Nicholas Green, Chair of the Law Commission, has been an observer on the Taskforce, and so has been able to observe the development of the whole process.
11. Let me turn now to cover some of the contents of the statement itself.

The conclusions of the Legal Statement on cryptoassets

12. Cryptoassets, as I have said, come in all shapes and sizes. The legal statement makes that clear. But it concludes after a rigorous legal analysis that, in general terms, cryptoassets have all the legal indicia of property and are, as a matter of English legal principle to be treated as property. There are two primary reasons.
13. First, the novel features of some cryptoassets, such as intangibility, cryptographic authentication, use of a distributed transaction ledger, decentralisation, and rule by consensus, do not disqualify them from being property.
14. Secondly, they are not disqualified from being property either because they can be regarded as pure information, or because it might not be possible to classify them as being things in possession or things in action.
15. This conclusion may be expected to have far-reaching consequences. It will affect the treatment of cryptoassets on insolvency and succession, and in cases of fraud, theft or breach of trust.
16. The legal statement concludes that there can be no bailment over a virtual cryptoasset, which cannot be physically possessed; cryptoassets are not documents of title, documentary intangibles or negotiable instruments.

Nonetheless, some types of security can be granted over cryptoassets.

The conclusions of the Legal Statement on smart contracts

17. The legal statement describes rather than defines a smart contract as having a characteristic feature of automaticity. It suggests that a smart contract is performed, at least in part, automatically and without the need for, and in some cases without the possibility of, human intervention.
18. These features mean that the terms of the smart contract must be recorded in computer-readable code. Many smart contracts are embedded in a networked system that executes and enforces performance using the same techniques as cryptoassets, namely cryptographic authentication, distributed ledgers, decentralisation, and consensus.
19. The legal statement concludes that a smart contract is capable of satisfying the basic requirements of an English law legal contract. Those requirements are that two or more parties have reached an agreement, intend to create a legal relationship by doing so, and have each given something of benefit. Whether the requirements are in fact met in any given case will depend on the parties' words and conduct, just as it does with any other contract.
20. Contractual obligations may be defined by computer code or the code may merely implement an agreement whose meaning is to be found elsewhere. Either way, the legal statement concludes that a smart contract can be identified, interpreted and enforced using ordinary and well-established legal principles.
21. Moreover, English law is competent, the authors suggest to deal with smart contracts formed between anonymous or pseudonymous parties, and can deal with bilateral smart contracts as well as those structured around Decentralised Autonomous Organisations.

22. Where a legal rule requires documents to be signed or in writing, such a requirement can in principle be met by using a private key or by a smart contract whose code element is recorded in source code.

Conclusions

23. I know that much of this sounds nerdy and hard to understand, but I believe that actually the legal statement addresses a series of difficult legal topics in a very approachable and intelligible manner.
24. I urge all of you to take the half an hour needed to read the document. No wet towels are needed. I guarantee that you will find it, at the same time, enlightening and fascinating.
25. I hope that the document will be hugely influential on legal thinking across the common law world.
26. Many thanks for your attention.

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